

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

**AGAPITO FLORES,**  
**Petitioner**

**V.**

**NATHANIEL QUARTERMAN**  
**Respondent**

§  
§  
§  
§  
§  
§  
§

**CIVIL ACTION NO. C-07-52**

**MEMORANDUM AND RECOMMENDATION**

Petitioner, an inmate at TDCJ-CID's Stevenson Unit in Cuerto, Texas, filed this *pro se* petition pursuant to 28 U.S.C. § 2254, challenging his 2004 Nueces County convictions for retaliation and making terroristic threats. Pending is petitioner's application for leave to proceed *in forma pauperis* (D.E. 5).

Petitioner's *in forma pauperis* data sheet reflects that as of January 30, 2007, petitioner had \$21.79 in his inmate trust account. The filing fee for filing a habeas corpus petition is \$5.00. Petitioner can afford to pay the fee.

**RECOMMENDATION**

It is respectfully recommended that petitioner's application for leave to proceed *in forma pauperis* (D.E. 2) be denied without prejudice and that petitioner be ordered to pay the filing fee within twenty days.

Respectfully submitted this 5<sup>th</sup> day of February, 2007.



B. JANICE ELLINGTON  
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **TEN (10) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to Fed. R. Civ. P. 72(b), 28 U.S.C. § 636(b)(1)(C) and Article IV, General Order No. 80-5, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within TEN (10) DAYS after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Servs. Auto Ass'n, 79 F.3d 1415 (5<sup>th</sup> Cir. 1996) (en banc).